

**(2011) 11 PAT CK 0110**

**Patna High Court**

**Case No:** Criminal Appeal (SJ) No. 6 of 1999

Prahalad Dubey

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision:** Nov. 14, 2011

**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 52, 55

**Hon'ble Judges:** Gopal Prasad, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Gopal Prasad, J.

Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant has been convicted for offence u/s 20(b)(i) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for four years and fine of Rs. 2,000/- and if he fails to deposit the fine of Rs. 2,000/- he will further sentence to three months.

3. The prosecution case as alleged from the prosecution report of Shri Ram Sunder Prasad, Excise Inspector that he raided the house of Prahalad Dubey on 26. 07. 1990, along with Inspector of Mobile Force. The raid was made in presence of local people such as Shyam Bihari Prasad and Girija Dubey and in course of raid 2.750 K.G. Ganja was recovered from a tin box kept in the house of Prahalad Dubey. Accordingly seizure list was prepared and box containing the Ganja was sealed. The search and seizure list was made in presence of two independent local witnesses. On the prosecution report, cognizance was taken. Consequently, during trial three witnesses were examined. P.W. 1, Shyam Bihari Sao, Excise Constable, P.W. 2, Girija Dubey and P.W. 3 Shyam Bihari Prasad.

4. P.W. 1 has stated in his evidence that during raid 2.700 K.G. Ganja was recovered from the house of Prahalad Dubey from a tin box. After recovery, seizure list was prepared and a tin box was seized and seizure list has been marked as Ext. 1. However, in his cross-examination he has stated that only two independent witnesses entered into the house. He did not saw from which room of the house Ganja was recovered because he had not entered into the house. He has further stated that he has not weight and as per statement of the accused weight was mentioned.

5. P.W. 2 and 3 are the seizure list witnesses, though, have proved their signature on the seizure list and have stated that no seizure was made before them and put their signature on the plain paper but denied the seizure and no other witnesses except the informant Ram Sunder Prasad, Excise Inspector come to depose.

6. Learned Additional Sessions Judge taking into consideration the evidence of P.W. 1, 2 and 3 held that merely because two independent seizure list witnesses have denied the recovery of Ganja, though, have admitted their signature on the seizure list, it is not proper to disbelieve the recovery of Ganja at the time of raid and taking into consideration the evidence of P.W. 1 that he has supported the prosecution case about seizure of Ganja and was leading with raiding party held that seizure list has been prepared in presence of Shyam Bihar Prasad and Girija Dubey sufficient to prove that seizure was made according to provision of law u/s 20(b)(1) and hence convicted the appellant and sentenced.

7. Learned counsel for the appellant however contends that two independent witnesses before whom Ganja was seized as alleged have not supported the prosecution case about seizure of Ganja, though, they proved their signature on the seizure list. P.W. 1, though, has supported the seizure of Ganja, but in his evidence itself, he has stated that he has not entered into the house and he cannot disclose that from which room of the house the Ganja was recovered and hence he is not eye witness of recovery of Ganja, but has only a witness that seizure list was prepared before him. However, there is no evidence whether seized article was kept and whether sample of seized article was sent to Forensic Science Laboratory and there is no report of Forensic Science Laboratory that seized article was Ganja.

8. From the evidence of P.W.1 the Ganja not seized before him. The Daroga and Inspector who raided the house of the accused not examined and P.W. 1 states that the independent witnesses P.W. 2 and 3 went along with Daroga and Inspector. P.W. 2 and 3 have not supported the seizure. Hence apparently there is no evidence of seizure.

9. However the signature on seizure list and proof of seizure list itself is not substantive evidence about the seizure, it is only a corroborative evidence has no significance without the proof of seizure by primary evidence. Lower Court held the person who recorded prove the content mentioned in it. Hence having to the

evidence of P.W. 1, 2 and 3 does not establish the seizure. From the evidence of P.W. 1 it can well infer that seizure list was prepared, but this seizure list is not evidence with regard to real recovery of Ganja to prove real recovery. The witness has to say that Ganja was recovered before him and mere formal prove of seizure list that seizure list was prepared before him is to the fact seizure list was prepared, but it cannot be evidence that Ganja was really recovered as evidence of seizure is only hearsay evidence with regard to the fact to the recovery of Ganja, it may have relies of evidence of corroborative nature.

10. However, second part of the occurrence neither the I.O. has been examined in this case nor seized Ganja was kept, nor sample was taken from the seized Ganja nor there is report of Forensic Science Laboratory has been brought on record to show that material seized was Ganja. Hence safeguard provided u/s 52 and 55 of the N.D.P.S. Act has not been complied as there is no evidence whether the seized Ganja was kept and whether sample was taken or there is no report of Forensic Science Laboratory. Hence order of conviction recorded by the lower court is not sustainable. I find and hold that prosecution has not been able to prove the charges beyond all reasonable doubt and hence order of conviction and sentence recorded by the lower court is hereby set aside and the appeal is allowed.